

Award No. 1286

Docket No. 1203

2-C&NW-FO-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Firemen and Oilers)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Laborer Constance Schlicht was unjustly deprived of her service rights to which entitled under the current agreement from February 4, 1946, to January 6, 1947, and accordingly the carrier be ordered to reimburse her for all of said time lost.

EMPLOYEES' STATEMENT OF FACTS: Mrs Constance Schlicht, hereinafter referred to as the claimant, was employed by the carrier at Madison, Wisconsin, as an engine wiper on April 27, 1943, and she remained continuously in the service in the Group 3 class until February 4, 1946.

The carrier laid this claimant off at the close of her assignment on February 4, 1946, without two (2) working days' advance notice, and retained in the service two employes, namely—James F. Carson, seniority dated January 3, 1944, and J. H. Bell, seniority date June 7, 1945—in Group 3, junior to this claimant.

The carrier declined to permit this claimant to exercise seniority over either junior employe, or restore this claimant to her service rights until January 7, 1947, and this is substantiated by copies of the statements submitted, identified as Exhibits A, A-1, A-2 and A-3, respectively, signed by the claimant, Local Chairman Root, James F. Carson and J. H. Bell.

The agreement, effective March 1, 1944, is controlling.

POSITION OF EMPLOYEES: It is submitted that this claimant was an employe subject to all of the benefits contained in the terms of the aforesaid agreement, although she was arbitrarily deprived of all of said guaranteed benefits and rights between February 4, 1946, and January 6, 1947.

It is indisputable that the carrier violated the terms of the collective bargaining agreement in the following respects:

1—All fundamental principles vital to an employe covered thereby were totally disregarded when the claimant was laid off effective February 5, 1946.

2—That part of Rule 13, reading:

“When force is to be reduced two working days' advance notice will be given the men affected before reduction is made . . .”

position at Madison at the time her position of engine wiper was abolished on or about February 4, 1946."

POSITION OF CARRIER: It is the prerogative of the carrier to establish laborer positions with duties to include various classes of enginehouse laborer work of a class coming within the scope of firemen and oilers' schedule. It is the position of the carrier that there was no violation of the provisions of the applicable agreement, when in order to adequately take care of the service requirements at Madison, it abolished an enginehouse laborer position the primary duties of which was the wiping of engines, on February 4, 1946, and established in lieu thereof another enginehouse laborer position, the duties of which in addition to engine wiping included the heavier work of knocking fires, taking coal and water, placing sand on locomotives, etc.

It is further the position of the carrier that the provisions of the third paragraph of Rule 13, firemen and oilers' schedule, were not violated as a result of not placing Mrs. Schlicht on the new enginehouse laborer position, when it was the judgment of the supervisor in charge (subsequently confirmed by Mrs. Schlicht) that she definitely was not qualified to handle the class of work required of the incumbent of the position. That the judgment of the supervisor in charge in that regard was correct is substantiated by Mrs. Schlicht's letter of January 7, 1947, to the enginehouse foreman (quoted in the carrier's statement of facts) wherein she admitted her inability to perform the work of knocking fires and placing coal, water and sand on locomotives, that was a part of the duties assigned to the incumbent of the enginehouse laborer position.

In respect to the alleged failure of the carrier to give Mrs. Schlicht two working days' advance notice of her layoff as provided in the fifth paragraph of Rule 13 of the applicable agreement, cited by the employees in support of their contention that she is entitled to compensation for all time lost as a result of such layoff: It is the position of the carrier that in event such advance notice was not given, the only claim that would be warranted would be that Mrs. Schlicht be allowed compensation for the two working days following the date of her layoff. As indicated in the carrier's statement of facts, Mrs. Schlicht was given the benefit of the doubt in respect to having been given two working days' advance notice of her layoff and the payment of compensation in her favor for the two days (February 5 and 6) following her lay-off was authorized.

It is also the position of the carrier that on basis of the facts in evidence there is no justification for the claim that Mrs. Schlicht be compensated for wage loss while laid off during the period there was no position available to which she was entitled on basis of her seniority and qualifications and that, therefore, such claim cannot properly be sustained. However, if such a claim were proper then it could be no greater than claim presented to the carrier; i.e.,—wage loss less earning in other employment.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The significant question is not whether the carrier has the right to abolish jobs and create new ones—it is rather whether the action taken by it in this case amounts to an unwarranted deprivation of Constance Schlicht's contractual right to the protection of her job.

It cannot be said that her work ran out as a result of the cessation of enginehouse laborer's duties. The engine wiping, which was Mrs. Schlicht's

principal assignment, continued to be performed after the carrier abolished her job. She was displaced by a junior male employe, because the additional job requirements of the newly established enginehouse labor job presumably were beyond her physical capacities. Neither was she given the opportunity to place herself on the new job in accordance with her seniority rating as provided by Rule 13, nor was it determined, after a fair trial, that she was not qualified to perform the added requirements.

It is not disputed that there was sufficient work to keep her fully occupied up to the time of her lay-off on February 4, 1946. The record does not disclose either the extent of the decrease in volume of engine wiping, or the time when such work fell off. Even if it is assumed that there was a substantial decrease in this type of work, there is no clear showing that it was impracticable to continue to assign her an amount of suitable additional duties sufficient to round out her daily work schedule. Admittedly, the laborer's work, other than engine wiping, which had been previously performed by her, was handled by the junior employe in the interval between her lay-off and recall. Her job rights were paramount to all employes of inferior seniority standing so long as there was work which she was capable of performing. From the evidence in this case it has not been convincingly proved that work opportunities for Constance Schlicht were non-existent, and, therefore, her lay-off was improper.

AWARD

That Constance Schlicht was improperly furloughed from February 4, 1946, to January 6, 1947, and she shall be reimbursed for all time lost by her as a result of such lay-off, less such earnings, if any, received by her during the same period.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1949.